



Global Employer Services

Navigating the Posted Workers Directive for business travellers – a “how to” guide for employers



What is the Posted Workers Directive?

The Posted Workers Directive was originally introduced in 1996 by the European Union to protect employment rights of individuals working in other European countries. The original Directive aimed to ensure that workers had the same level of social protection as domestic workers, regardless of the EU country in which they worked, in addition to preventing unfair competition between businesses in lower- and higher- cost European Member States (MSs).

In 2014, the EU adopted an Enforcement Directive to further strengthen the protection of posted workers and stop circumvention of the rules. This has triggered the introduction of different new compliance requirements for employers across the EEA. It generally applies to all business travellers and assignees, and requires employers to provide pre-travel notifications to the relevant authorities in the country of posting. It can also affect third-country nationals, depending on the specific rules adopted in each Member State.



Where do the challenges lie for employers trying to manage compliance with Posted Workers Directive?

Inconsistency across the EU

Each Member State has implemented the Directives in a slightly different way resulting in different reporting requirements as to how and when a PWD notification is required for example, with some MSs having carve outs based on de-minimis days of presence and/or exempt purposes of travel. Equally, each MS has implemented its own penalty structure for non-compliance. There are varying degrees of audit activity in different MSs, though generally we are seeing increased

audit activity across the board with PWD forming part of wider social and labour audits.

The difficulty with business travellers

As the Directives apply to those temporarily working abroad in other EEA MSs, both business travellers and assignees fall under the Posted Workers legislation, depending on transposition into national law,

The specific challenges employers face around business travellers' PWD compliance lie with their identification, impacted volumes and data gathering particularly given the PWD notification is a pre travel requirement. This can mean that a larger and more comprehensive implementation/set-up project is typically required to enable compliance with PWD legislation for business travellers. This is necessary for various reasons, primarily to maximise the chances of achieving the desired levels of compliance, to minimise any negative impact on employee experience, and to drive down the administrative burden/cost of compliance with the Directives.

Typically, the lead time for assignments is longer and volumes fewer, meaning that achieving PWD compliance for this population is less challenging from a time perspective and puts fewer demands on resource for data gathering and tracking.

Exemptions – a varying landscape

Over the past few years there have already been some exemptions and clarifications introduced by various EEA MSs to alleviate PWD compliance for business travellers (e.g. de-minimis thresholds, exempt purposes of travel) and recent guidance from the Commission may lead to further changes. However, due to inconsistencies

generated by transposition into national laws, the topic of PWD compliance in a business traveller context is here to stay and challenges for employers will likely continue to be just as significant as they currently are. The mixed landscape of exemptions and de-minimis thresholds across the EEA MSs means that some employers are likely to favour a centrally enforced definition across the board.



Current audit activity landscape

EEA MSs are taking notice. According to figures issued

by the EU commission, exchanges of information between member states in the context of PWD related audits have increased by over 60% in the last two years, with some countries sending more requests than others do. The responsibility for ensuring PWD compliance for all posted workers (business travellers and assignees) sits with the home employer. However, in some countries it is a joint liability with the receiving entity. If employee are working on client sites then the sending employer will need to ensure PWD compliance obligations are met or risk reputational harm and potentially jeopardising their relationship with client/customer.



Business travellers and A1s

The EU Commission recently re-stated that A1s are required for business travellers irrespective of length of trip and purpose of travel. They are also currently still working on their proposals to revise EU social security Regulations which may include a carve out from the requirement to put in place A1s for

business trips, although how business trips are distinguished from short term assignments remains to be seen. EEA member states will continue to interpret this statement from the Commission as they see fit.

Some countries require that an A1 certificate be submitted as part of the PWD notification process, and almost all require that an A1 (or at least application) be provided in the event of an audit as part of the "social documents". Likewise, some countries are tying PWD to the immigration process.



How can Deloitte help?

We have developed a centralised model which makes use of automated

processes and robotics wherever possible. Deloitte's PWD solution is adaptable and can link in with your HR systems and corporate travel provider(s) to reduce the burden on dealing with PWD compliance pre-travel. For business travellers, time is of the essence and the delivery model we have set up ensures a light-touch process to improve overall compliance, as well as oversight via dashboards and reporting. Speak to us about how we can best implement the model which suits your business.



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